

Great Lakes Wind on the Water Meeting Minutes: June 23, 2008 (via teleconference)**WOW Group Member attendees included:**

Todd Vesperman (Army Corps of Engineers, by phone), David Siebert (DNR, by phone), John Shenot, Lisa Stefanik, Lauren Azar, Dan Sage, Steve Levine (PSC), Mike Cain (DNR), Scott Smith (Alliant Energy) Don Peterson (MGE, by phone), Charlie Severance (WI Public Service Corporation, by phone), Mike Friis (DOA, by phone), Karen Etter Hale (Audubon Society), Richard Stadelman (WI Towns, by phone), Dave Donovan (Xcel, by phone), Tom German (BCPL, by phone), Monica Groves Batiza (WI Counties Association, by phone), Jim Zorn (GLIFWC, by phone), Kevin Crawford (Mayor of Manitowoc, by phone),

Other attendees included: Angela James (MGE, by phone), Tom Dosch (DOJ, by phone), Bob Owen, (Citizen, by phone), Kate Angel (DOA Coastal Management Program, by phone), Joe Mettner (Integritys, by phone), Paul Helgeson, Regina Butler, Rassa Ahmadi (PSC)

Welcome / Announcements:

- Commissioner Azar notes that this is the 3rd of seven schedule WOW meetings.
- This meeting will focus mainly on the work of the Legal Work Group thus far. What is discussed today should not be considered the final legal analysis. At this point, the Legal Group is focusing on legal analyses that may impact other groups' work.
- The next WOW meeting is July 7, and the other three Work Groups will give their preliminary report at that meeting.

Legal Group Update #1: Mike Cain (DNR):

- Statutes in Chapter 30 include the principal provisions for placement of structures in the Great Lakes.
- Section 30.12 – Any riparian owner has to permit with the Department before building any structure. Authorized riparians can put structures in the near-shore area. Under the statute, the riparian can apply to the Department to put a structure in the water. It can likely go as far as 200 ft out from shore— where swimming rafts are currently allowed.
- Section 30.21-- Public utility can place “public utility structures” in the lake bed of Lake Michigan or Superior. Wisconsin has already authorized water intakes for power plants, but an array of wind turbines would be hard to fit under this statutory umbrella and the definition of a riparian zone. Coordination with the PSCW and examining Chapter 196 and definitions of a public utility would be necessary.

- Review of transmission lines under Section 182.017(2) - The Department would review the transmission lines associated with a Great Lakes Wind project as it generally does to examine navigation / “public use of any . . . body of water”.
 - Under 30.20 – if anyone is undertaking dredging, they need to get a contract or permit from the DNR.
 - Under 30.74 -- WI has responsibility to develop uniform navigation aids (buoys, lights, etc) with the Coast Guard.
 - Under 24.39 – Leasing provisions – DNR has role in leasing under 30.11 – before BCPL can issue lease, DNR has to issue report re: physical changes of area and if the project is in the public interest (assess navigation, habitat, etc).
 - Under 30.19 – Grading on bank of waterway – if there is a grading in excess of 10,000 sq ft on the bank of navigable water, it would require a DNR permit.
- DNR will do water quality certification under the Clean Water Act – would apply all state quality water standards.

Endangered species – Any development of wind turbines will need to be assessed for potential impacts on endangered or threatened species under Section 29.604.

Lake bed grants – under WI law, a lakebed grant can be issued, and have been issued historically to power plants. DNR reviews grants and assesses the public interest.

Other discussion on Mike’s summary presentation:

- Boundary Waters Treaty – Great Lakes DNR office will be examining this and reporting further down the road.
- It appears a developer that could do a wind project right now would either be a riparian or receive a lake bed grant.
- With regards to the municipalities – would they be able to develop land only where they are riparians or wherever they have jurisdictional boundaries? This question needs to be explored.
- Section 30.13 in the statutes states that riparians can go 200 ft from shore, and pier headlines also are defined in this statute.

Legal Group Update #2: Todd Vesperman -- Army Corps of Engineers

Todd highlights two primary federal laws may affect the siting of wind turbines in the Great Lakes– Section 404 of Clean Water Act & Section 10 of Rivers / Harbor Act

Legal Group Update #3: Steve Levine – PSC

There are two sections in the Wisconsin statutes that will impact Great Lakes wind projects. PSC approval would be required of a Wind project under either Wis. Stat. §196.491(3)(CPCN or certificate of public convenience and necessity) or §196.49(2)&(3) (CA)

- Developments must also comply with environmental standards through WEPA. For certain major construction projects, the Commission must do an Environmental Impact Statement. There must be a comparison of alternatives.
- Developments must also consider Section 1.12 – the Energy Priorities Law -- where first priority for generation construction projects would be energy conservation; the second priority is renewable energy. This rank/order will likely benefit wind developments.

Generally speaking, potential wind projects on Lake Michigan or Superior would not intersect with federal power law. Conversely, an entity that develops a project that may be under 100 MW would be impacted by federal laws, as they may not be designated as a utility.

Legal Group Update #4: Tom Dosch – DOJ

Tom is working with Jim Zorn, Exec. Administrator of GLIFWC to examine tribal regulatory issues –

- Be aware that each tribe signed land section treaties (sold land to the U.S.), but retained the right to hunt, fish or gather in lands that were encompassed by these treaties. Each member tribe has their own bundle of rights with regards to their reservation.
- No direct regulatory approvals for wind projects are required from surrounding tribes. Indirect regulatory approvals are likely required for possible upcoming projects.
- Coordination and agreement through several federal programs are at issue; however, there should not be insurmountable permitting problems.
- Lake beds are ultimately owned by the state of Wisconsin; therefore, leases need not be acquired from Tribal governments. Only Chippewa Bands in WI have court-recognized fishing rights in the Great Lakes waters. Other bands do not have court-recognized treaty rights in the federal waters.
- Treaties outlining the establishments of reservations imply / create a right to fish in the waters in Lake Superior; however, a right to harvest doesn't equate with regulatory authority. A wind turbine array could conflict with a fishing area, but that could likely be avoided easily.

Other Tribal Regulatory Issues being explored:

- Environmental servitude
- Clean Water Act -- Tribes have to apply for tribal discharge permits with the federal government. Tribes acting as a CW authority. No tribe has applied for authority on either of

the Great Lakes; assessing applicability is therefore difficult. Tribes will likely get a TAS designation whenever they ask for it.

- International – Great Lakes Treaty –
- Historic preservation issues -- Submerged logging and/or property – there may be historic or cultural value to items in the lake bed. Natural Historic preservation Act – each tribe has their own.
- Superfund law could be triggered if there are damages to natural resources. Natural resource damage claims have previously been made before near Great Lakes. Contaminated sediment could cause concern. Two tribes – Bad River, and Red Cliff – obtained trustee status in Superior rail case (contaminants)
- Use rights: Explore the following treaties:
 - 1854 Treaty – establishments of particular reservations – Bad River and Red Cliff –in WI
 - 1842 Treaty with Chippewa – land possession treaty – Lake Superior territory in Wisconsin.
 - 1836 Treaty with Chippewa – covers northern part of Lake MI and part of Lake Erie –

Legal Group Update #5: Joe Mettner

Joe researched utility aid payments that go to counties or municipalities that host utility projects. He notes there is likely a connection with the community group on this issue.

- The 2003 passage of Act 31 produced a capacity-based utility aid payment – not one based on mill rate. Generally speaking, a municipality hosting a wind turbine site may receive an aid payment of up to \$4,000 per MW of nameplate capacity if the project exceeds more than 1 MW.
- In 2009, old generation will receive the greater of shared revenue aid payments calculated for pre-2004 historical generation on a per mill, book value basis, or the capacity based utility aid payment based on the \$4,000 per MW of nameplate capacity.
- Payment is capped based on population of the municipality. Therefore, as to the siting of turbines in the lake, whether a payment is due will depend on whether the turbines are located in a certain municipality.

Legal Group Update #6: Tom German – BCPL

The Board of Commissioners of Public Lands (BCPL) has very limited authority under WI Stat. 24.39(4) – which addresses submerged lake beds.

- Defining submerged land that may be leased – BCPL can lease lands under Lake Superior, MI, and a few others.
- Potential Lessees can only lease to a riparian owner
- Purpose of lease – BCPL can only approve a lease for harbor improvements, unless it is a municipality. Energy generation is not a statutorily approved activity at this time.
- Lease duration is currently 50 years.
- BCPL has joint jurisdiction with the DNR on the above-mentioned issues. DNR must find that the lease is in the public interest under statute 30.11(5). Army Corps of Engineers also must issue permits.
- BCPL has discretion for leasing.
- In conclusion, either a Lake Bed Grant through the Legislature or a riparian application for its riparian zone are the only current two legal ways to develop Wind on the Water without statutory changes since the riparian zone does not extend that far into the lake. In practicality, a Lake Bed Grant will likely be the mechanism for developing wind projects on the water.

Legal Group General Discussion

A general discussion ensued about other issues we may wish to explore. Items included:

- Joint Strategic fishery management plan.
- Lake Superior statewide management plan
- Marine Protection and Research Act – 5 total sections; two are possibly applicable. Marine sanctuaries may apply – there is currently one on the Great Lakes near Thunder Bay.

Rassa Ahmadi updated the group on research being done by PSC staff. Some of the research includes:

- Migratory Marine Game Fish Act
- National Fishing Enhancement Act – Artificial reefs – act controls navigational waters of US and waters adjacent to the continental shelf. Definitions currently unclear
- Migratory Bird Act – Initial feedback from DNR staff – would be implicated by turbine structures, would likely be wrapped into a federal review.
- Estuaries
- Bald Eagle Protection Act may also intersect with a wind project.

Update from Work Groups --

Human Environment Group –

- Next meeting: July 2
- Is there narrowing of the possible transmission corridors coming out of the water? The Human Environment group was planning on analyzing it in a very generic way, but if there has been a narrowing of geography that would be helpful.

Engineering / Economic –

- Progress is being made. More specific siting distances are being discussed – 2, 5, and 20 miles out in Lake MI – to try to come up with specific examples and issue analysis re: offshore wind. All of these analyses are outside of the riparian zone.
- Looking for a bulleted list of information ready for next meeting; of equal importance is finding the gaps.
- IPP would not currently be able to apply for a lake bed grant. A municipality (as a riparian owner) could develop a project, or develop as a co-owner.
- Our process should include a recommendation about how statutes may wish to be changed for the better.

Community Involvement –

- The group finalized an article to distribute to Counties & Towns Associations, etc.
- Coastal Management office will be sifting through public comment.

Public Comment – There was no public comment.